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IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 338

THE TIME CONTROL CORPORATION, a Michigan Corporation; SAUL KORMAN, d/b/a Apollo Theatre; WESTOWN THEATRE CORPORATION, a Michigan Corporation; HELFER REALTY Company, a Michigan Corporation, and all other members of the class,

Plaintiffs and Appellees,

and

J.C. WEBSTER STORES, INC., a Delaware Corporation; DAVIDSON BROTHERS, INC., a Michigan Corporation; LOCAL 212, INTERNATIONAL BROTHERHOOD OF BRIDGE, STRUCTURAL AND STEEL [illegible],

Intervening Plaintiffs and Appellees,

v.

CITY OF DETROIT, a Municipal Corporation; BOARD OF WATER COMMISSIONERS of the City of Detroit; OSCAR A. WAGNER, Commissioner; GEORGE A. HEAPHY, Commissioner; ALFRED J. SIMPSON, Commissioner; HARVEY A. WAGNER, Commissioner; ARNOLD J. SCOTT, General Manager of the Detroit Department of Water Supply,

Defendants and Appellants.

REPLY TO RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

(For Table of Authorities see inside front cover)

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[redacted]

LIST OF ATTORNEYS

[redacted]

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 333

THEATRE CONTROL CORPORATION, a Michigan Corporation; SAUL KORMAN, d/b/a Apollo Theatre; WESTOWN THEATRE CORPORATION, a Michigan Corporation; HILLIER KILBRIDE Company, a Michigan Corporation, and all other members of the class,

Plaintiffs and Appellees,

and

ACF-WRIGLEY STORES, INC., a Delaware Corporation; DAVIDSON BROTHERS, INC., a Michigan Corporation; LOCAL 575, INTERNATIONAL BROTHERHOOD OF BRIDGE, STRUCTURAL AND STEEL WORKERS OF AMERICA, AFL-CIO,

Intervening Plaintiffs and Appellees,

v.

CITY OF DETROIT, a Municipal Corporation; BOARD OF WATER COMMISSIONERS of the City of Detroit; OSCAR A. WAGNER, Commissioner; GEORGE A. SHAFFER, Commissioner; ALFRED J. SIMPSON, Commissioner; HARVEY A. WAGNER, Commissioner; GERALD J. REMUS, General Manager of the Detroit Department of Water Supply,

Defendants and Appellants.

REPLY TO RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Respondents contend that this Court lacks jurisdiction of this case because the Supreme Court of Michigan "rested its decision on both an adequate state ground and a federal ground." (Brief, 2)

Cited by them as "a precise parallel of the instant situation" is *Central Savings Bank v. New York*, 18 N.E. 2d 151, 19 N.E. 2d 659, and 306 U.S. 661, 83 L. ed. 1058. (Br. 3)

This Court, however, had occasion to interpret and distinguish that case in *Minnesota v. National Tea Co.*, 309 U.S. 551, 556, 557; 84 L. ed. 920, 923, as follows:

> "* * * The cases in which the New York Court of Appeals professes to go on both the state and federal due process clauses clearly rest upon an adequate nonfederal ground. For that court has ruled that its own conception of due process governs, though the same phrase in the Federal Constitution may have been given different scope by decisions of this Court. * * *"

Although both the Michigan and Federal constitutional provisions on due process (Amend. Art. 14, Sec. 1, Federal Constitution and Art. II, Sec. 16 Michigan Constitution[1]) were pleaded (Pet. 4), the Supreme Court of Michigan held the demand charge for water service here involved illegal as a violation of due process without specifying which constitution. (Pet. 4)

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[1] Art. 14, Sec. 1, Fed. Const. Sec. 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Art. II, Sec. 16, Mich. Const. Sec. 16. No person shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law.

If the jurisdictional proposition advanced by respondents were true, this Court would be deprived of its jurisdiction in cases clearly involving any federal constitutional provision where a state constitutional provision is similar or identical by the failure of the state court to identify the particular constitution it was alluding to.

To deprive this Court of jurisdiction, it is said that "the non-federal ground (of the state court's decision) must be independent of the federal question. 'Where the non-federal ground is so interwoven with the other as not to be an independent matter * * * our jurisdiction is plain.' *Enterprise Irrig. Dist. v. Farmers Mut. Canal Co.*, 243 U.S. 157, 164;" *Stern & Gressman on Supreme Court Practice*, 2nd Ed., p. 99.

Petitioners recognize th Court's discretion as to its own jurisdiction, but the argument of respondents, if sound, would obviously deprive this court of jurisdiction at the mere whim of state courts where state and federal constitutional provisions were the same or provided similar protections.

Respectfully submitted,

CITY OF DETROIT, a municipal corporation;
BOARD OF WATER COMMISSIONERS, et al.,
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Dated: September 26, 1962.